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Michigan District Judges Association



August 31, 2009

Chief Justice Marilyn Kelly
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

RE: ADM File 2009-04

Dear Chief Justice Kelly:

In this administrative file, the Supreme Court has published for comment three separate proposed rules regarding the disqualification of a Supreme Court justice from a particular case, as may be required by judges under similar circumstances. Up to this time there has not been such a provision. The administrative file proposes two alternative new rules applicable to the Supreme Court only, Alternatives A and B; and a proposed amendment to the existing rule that currently applies to judges, Alternative C.

These proposals have been reviewed by the Michigan District Judges Association. At its August 2009 board meeting the comment on behalf of our organization was adopted.

The Michigan District Judges Association recognizes that there are significant and legitimate arguments both in favor and opposed to the need for a formal rule or procedure for the disqualification of Supreme Court justices. It also recognizes the legitimate arguments with respect to each of the proposed alternatives.

However, since the publication of the administrative file, the United States Supreme Court has ruled that under some circumstances the failure of a state Supreme Court justice to be disqualified may be a constitutional due process violation. As a result of this decision, such a disqualification or at least the consideration of a disqualification may be constitutionally mandated. Consequently a procedure should be established for such circumstances, and the adoption of a court rule is desirable.

Of the alternatives proposed by the administrative file, the MDJA favors Alternative C because it establishes the same accepted standards as applies to other jurists in general, it provides that the reasons for the justice's and the courts action be published, and it provides for a more fair and open process for review of a denial of a request for disqualification.

The MDJA recognizes that there may need to be further development of the proposed rule. However in that process, we believe that the principals of

openness and collegial discussion will lead to the development of consistent and objective standards governing this question.

As always, if there is need for additional information or explanation, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Hammer", with a stylized, flowing script.

Richard Hammer
Chairperson, Rules Committee
Michigan District Judges Association

RH/dw

C: Corbin R. Davis, Clerk of the Michigan Supreme Court
Hon. Susan Moiseev, MDJA President
Anne Boomer, Administrative Counsel